

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
EUROPE, : Docket #1:20-cv-07787-  
 : JGK-KHP  
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Plaintiff, :  
 :  
- against - :  
 :  
EQUINOX HOLDINGS, INC. et al, : New York, New York  
 : August 25, 2021  
Defendant. :  
 : TELEPHONE CONFERENCE  
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PROCEEDINGS BEFORE  
THE HONORABLE KATHARINE H. PARKER,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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None

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THE CLERK: Calling case 20 civil 7787, Europe versus Equinox Holding, Incorporated; the Honorable Katharine H. Parker, presiding.

Beginning with counsel for the plaintiffs, could you please make your appearance for the record?

MS. HILARY J. ORZICK: Good afternoon, this is Hilary Orzick from Crumiller P.C. on behalf of plaintiff. And I'm joined by my colleague -- I'll let her introduce herself.

MS. CHLOE LIEDERMAN: This is Chloe Liederman from Crumiller P.C. Good afternoon. I am appearing for the plaintiff along with Ms. Orzick.

HONORABLE KATHARINE H. PARKER (THE COURT): Good afternoon.

THE CLERK: And beginning with counsel for defendant Equinox Holding and Mr. Maltman, could you please make your appearance for the record?

MR. JASON ZOLDESSY: Yes. Good afternoon, your Honor. This is Jason Zoldessy, along with my colleague, Greg Slotnick, from Jackson Lewis P.C. We're counsel for the Equinox defendants as well as defendant Christopher Maltman.

MR. GREGORY S. SLOTNICK: Good afternoon, your Honor.

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THE COURT: Good afternoon.

THE CLERK: And counsel for Mr. Gecht, can you please make your appearance for the record?

MR. ELIOR SHILOH: Elicor Shiloh from the law firm of Lewis Brisbois Bisgaard & Smith on behalf of Adam Gecht.

THE COURT: Okay. Good afternoon.

A few preliminaries before we get started. I ask that you keep your phones on mute, unless you're speaking, to eliminate background noise. I ask that you state your name before speaking for clarity of the record. The Court is making a recording of this conference. If you'd like a transcript, you can order one. It must be ordered within three days.

Finally, the court's conference line is open to the press and public on a listen-only basis. And I want to remind everyone on the call that the court prohibits others from recording and rebroadcasting court conferences. Violations of this rule may result in sanctions.

So initially this case was referred for a particular discovery issue that has now been resolved, and then the case was referred for more general pretrial management. And I understand there are a couple of discovery disputes.

First, I want to address the deposition issue. As

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2 I understand it, Mr. Shiloh, you did not get to depose the  
3 plaintiff fully, and you need some additional time; is that  
4 right?

5 MR. SHILOH: That's correct, your Honor. If your  
6 Honor would like me to present our position on it, I can;  
7 or I can rely on our papers.

8 THE COURT: Yes. I read your papers. What's the  
9 problem from plaintiff's perspective? Why can't Mr. Gecht,  
10 who's a separate defendant, question the plaintiff?

11 MS. ORZICK: Your Honor, plaintiff doesn't dispute  
12 that defendant has the right to continue to depose the  
13 plaintiff. And we have no objection to him doing so. By  
14 defendant's own calculation, only 43 minutes of the seven  
15 hours remain. Counsel for defendant Gecht originally said  
16 he had about an hour and a half of questioning remaining  
17 during the last deposition, and so we as an offer of  
18 compromise, even though he's only entitled to the 43  
19 minutes absent a court order, offered to produce plaintiff  
20 for an additional hour and a half on the record. But  
21 defendant Gecht is now arguing that he needs four hours on  
22 the record, which we believe is excessive and harassing.

23 THE COURT: Mr. Gecht, four hours does seem  
24 excessive. What information do you need to obtain that  
25 wasn't already obtained during the first portion of the

1  
2 deposition?

3 MR. SHILOH: Your Honor, the standard here is good  
4 cause, and it's based on the case and specific facts. And  
5 good cause is [indiscernible], because when the first  
6 deposition was taken of the plaintiff, it was taken by  
7 Jackson Lewis, who is counsel to Equinox, Chris Maltman.  
8 They asked questions on behalf of Equinox and Chris  
9 Maltman. And then there was even a party that has not been  
10 served, Jose Taveras, where they inquired and spent a  
11 considerable amount of time relating to interactions  
12 between the plaintiff and Jose Taveras. You know, at the  
13 deposition itself, for reasons unknown to me, counsel took  
14 the position I was prohibited to even ask questions. And  
15 we were also delayed further at the deposition because of  
16 the discovery dispute where we had Judge Koeltl intervene.

17 Since the deposition itself has taken place, there  
18 have been developments as far as testimony. There have  
19 been at least four or five depositions that have taken  
20 place where testimony's been placed on the record, new  
21 discovery information relating to my client; and there's  
22 been also further document production in this case relating  
23 to the overall case and my client. And considering that my  
24 client is a named party, he at the very least is entitled  
25 to -- I'm not asking for the whole amount -- I'm asking for

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four hours, and hopefully it will be less than that, your Honor. But to be only given an hour and a half on behalf of somebody who wasn't even able to ask any questions. And I believe Jackson Lewis took a proper deposition. It wouldn't be fair to my client to simply rely on their questioning. I'm trying to defend my client. There's no prejudice --

THE COURT: Sure. I understand that, Mr. Shiloh, but you haven't fully described what the separate areas of inquiry would be that would require four hours for you. I mean, there's going to be overlap, obviously, in the questions you'd be asking the plaintiff. So --

MR. SHILOH: Sure, your Honor. I --

THE COURT: -- I'm trying to better understand what is it that's unique to your client that hasn't already been gone over?

MR. SHILOH: Well, I believe it takes more than an hour and a half for me to ask questions with respect to the plaintiff's communications with my client, the plaintiff's allegations in the case relating to my client. I believe I'm permitted to ask questions about other people who were involved in her termination, signed off on her separation from the company, who were involved in those meetings. There have been schedules that have been produced since her

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deposition setting forth attendance records. And it will take more than an hour and a half, your Honor, to go through that material with the plaintiff. And at the end of the day, my client shouldn't be limited to an hour and a half when he's been named in a Complaint and the plaintiff is seeking -- has made salacious accusations against him and is seeking damages against him.

THE COURT: But, Mr. Shiloh, are these areas of inquiry things that were not already asked of plaintiff?

MR. SHILOH: Yes. They are areas -- I made it clear -- yes, they are not the same areas. And it is not my practice to repeat a question that's already been asked by Equinox. I've taken the time to review the transcript and to limit my questioning to what has not already been asked and what is specific to my client.

I hope to be done --

MS. ORZICK: Your Honor, may I respond?

MR. SHILOH: -- in [indiscernible] hours, you know, if everything goes smoothly, your Honor.

THE COURT: All right, I'll allow plaintiff a minute to respond.

MS. ORZICK: Thank you, your Honor. Just briefly, it is not plaintiff's fault that defendants inadequately portioned out their time. Defendant Equinox did question

our client for six hours and 17 minutes, at the very least. That's by defendant Gecht's own calculation. And so the fact that they left him only 43 minutes is not, you know, plaintiff's fault; doesn't necessarily warrant an extension because of poor time management.

Second, the fact that there have been additional documents produced is against a fault of defendants, not of plaintiff. And so, you know, the fact that he wants to extend her deposition based on defendant's own belated production is really not warranted.

And then, finally, there just is not four hours' worth of testimony that can be drawn out from our client, considering what she has already testified to. We are deeply concerned that defendant Gecht, as he had previously even -- as his counsel relayed to us, that he intends to use this opportunity to, quote/unquote, "confirm" plaintiff's prior testimony. So we are deeply concerned that he is using this opportunity inappropriately to harass the client and to re-ask her questions she's already been asked.

So, again, your Honor, we don't object to him -- to producing our client. We don't object to even providing additional time. We've more than doubled the time allocated to give him an hour and a half, which really

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should be adequate. But we really do think that four hours is excessive and unwarranted, given the circumstances.

THE COURT: All right, I've heard enough. Thank you very much to both sides. I'm going to permit Mr. Shiloh to depose the plaintiff for up to three hours. And Mr. Shiloh, you should not go over things that there was already testimony on. It's one thing -- I'm not going to preclude you from getting clarification if something is clarifying, so that's of course going to be permitted. But you shouldn't be asking questions that are redundant of information that's already been testified to by the plaintiff. So three hours, and you all should schedule that as soon as possible.

Let's next talk about plaintiff's motion to compel certain personnel records of defendant. So personnel records contain a lot of things that aren't particularly relevant to the case. It sounds to me that what you're -- what plaintiff would be focused on would be things such as performance evaluations or discipline, is that correct?

MS. ORZICK: Yes, your Honor, as well -- and this is Hilary Orzick -- that's correct, as well as any other complaints of discrimination that have been filed against the individual defendants that are in the personnel records of the individual defendants.

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THE COURT: Right, right. Okay. So let me ask the plaintiff, if defendants were disciplined with something other than the type of conduct complained of in this case, like, for -- I don't know, I would be speculating as to what it could be, but that wouldn't be particularly relevant, do you agree?

MS. ORZICK: Well, it could be, your Honor. So part of the issue in this case is that our client was terminated, and the reason that she was given for her termination was her alleged lateness. And so to the extent that there are any complaints about tardiness or lateness or absences or things like that, that could actually -- even nondiscriminatory-based complaints could still be highly relevant in this case so that we can prove disparate treatment or pretext.

THE COURT: Well, do you have any basis right now to believe that any of these individuals were late or engaged in the same type of conduct but were not disciplined?

MS. ORZICK: Yes, your Honor. In fact, specifically, Jose Taveras, our client made a complaint that she was being treated unfairly in comparison to him. Mr. Taveras was her supervisor, and she complained that he was late just as often as she was; yet, she was the only

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one being disciplined for such lateness. So we do have a good-faith belief that there was disparate treatment for these nondiscriminatory-based complaints. And Chris Maltman, as well, is another individual defendant.

THE COURT: Okay. So why isn't Equinox, why doesn't it agree to produce for these individuals complaints made against them of discrimination of the sort alleged by the plaintiff and their performance evaluations? What's the problem with that?

MR. ZOLDESSY: Your Honor, this is Jason Zoldessy foe the Equinox defendants. So there's three individual defendants. For defendants Maltman and Taveras defendants have produced all documents in these files pertaining to other complaints, including other complaints that have nothing to do with discrimination or protected activity. Any discipline issued to Taveras and Maltman had been produced, as well. There was documentation produced pertaining to counseling that Mr. Taveras received about time and attendance. There is nothing else in Mr. Taveras's time about time and attendance. So we believe there's absolutely -- if that's what plaintiff is seeking but they just represented they are, we believe everything in Maltman and Taveras's files has been produced.

1 Defendant Gecht, during this time period he was,  
2 you know, essentially the plaintiff's second-level  
3 supervisor. He was a regional director who supervised  
4 Mr. Taveras, who was the general manager for plaintiff.  
5 What plaintiff really seems to be after is that plaintiff  
6 knows that there's another litigation out there involving  
7 Mr. Gecht which postdates plaintiff's employment with the  
8 company, which has nothing to do with plaintiff, which has  
9 nothing to do with the club where plaintiff worked, and  
10 that it seems like they're on a fishing expedition to learn  
11 more about this other case out there involving Mr. Gecht.  
12

13 THE COURT: Is there an allegation of  
14 discrimination of the same sort against Mr. Gecht?

15 MR. ZOLDESSY: There's -- I mean, the claims are a  
16 bit different. I don't believe there's any -- the claims  
17 in our case against Mr. Gecht are retaliation, that  
18 essentially plaintiff is complaining that Mr. Gecht did not  
19 properly respond to reports of discrimination or harassment  
20 that plaintiff was lodging with the company. I mean,  
21 obviously, the internal complaints about Mr. Gecht that  
22 relate to the other case, I mean, they're different and  
23 they postdate the plaintiff's employment. I mean, if there  
24 was an internal complaint about retaliation by Mr. Gecht,  
25 which I don't believe there is, I understand that would be

1 fair game. But, I mean, there are other claims about  
2 Mr. Gecht from someone totally different who has his own  
3 case against the company.  
4

5 THE COURT: All right, I'd like to hear from --

6 MS. ORZICK: Your Honor, if I can respond to that?

7 THE COURT: Yes. I mean, first, it sounds like,  
8 with respect to the two, Taveras and Maltman, there's  
9 nothing else that is outstanding of these types of records.  
10 But let me hear what you have to say with Gecht?

11 MS. ORZICK: Yes, your Honor. So just to correct  
12 the record, plaintiff does have allegations of  
13 discrimination against Adam Gecht. It's not solely a  
14 retaliation claim against Adam Gecht. So other complaints  
15 of discrimination would therefore be relevant.

16 Also, with respect to retaliation, even if the  
17 complaint is not identical to our clients, Mr. Gecht's  
18 response to such a complaint, whether or not there was any  
19 retaliation is relevant and subject to discovery. The way  
20 that these types of complaints are handled and the way that  
21 they are responded to by Gecht and as well as by the  
22 company are discoverable and highly relevant, particularly  
23 with respect to proving punitive damages. When a jury is  
24 asked to review punitive damages and what is warranted,  
25 they'll look to see motive, they'll look to see knowledge.

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These are the kinds of things that can only be established if we have a clear picture of what knowledge the company had of Gecht's behavior, his history of behavior, whether or not punitive damages can be useful in curtailing future behavior. So this, I think, is extremely relevant and subject to discovery.

MR. ZOLDESSY: Your Honor --

THE COURT: Okay, I've heard enough -- I've heard enough. I'm going to require Equinox to disclose any performance assessments of Mr. Gecht as well as evidence of other complaints of discrimination or retaliation made against him by employees.

MR. SHILOH: Your Honor, could I just make one potential clarification. Mr. Gecht worked for the company for many years. I mean, do you want the performance evaluations for the, you know, 15 or so years he was there need to be produced?

THE COURT: No, no, I don't think 15 years is necessary. I think two or three years prior to the year where the issue occurs and then a year afterwards.

MR. SHILOH: And just to confirm, your Honor, plaintiff worked for the company from December 2018 till September 2019. She was there -- I'm sorry -- November 2018.

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2 THE COURT: So performance evaluation should be  
3 '16, '17, '18, '19, '20. Is there '21?

4 MR. SHILOH: I don't believe so, but I'm not  
5 positive, your Honor.

6 THE COURT: All right, five years of performance  
7 evaluations.

8 Okay, so let's move to the next item, which is the  
9 shift schedules. So as I understand it, defendants have  
10 agreed to produce shift schedules for the managers at  
11 92nd Street. Is this still an issue?

12 MR. ZOLDESSY: It's -- your Honor, this is Jason  
13 Zoldessy for defendant --

14 MS. ORZICK: You can go ahead, Jason.

15 MR. ZOLDESSY: I'm sorry, yeah, I didn't mean to  
16 interrupt. This is Jason Zoldessy for defendants. I mean,  
17 the only thing which has not been located, your Honor, is  
18 for the three months -- I'm sorry -- the three weeks of  
19 September 2019, when the plaintiff was there. I mean, I  
20 could represent that defendant's IT department has been  
21 spending an enormous amount of time to try to locate these,  
22 you know, as well as any other copies. I mean, if we find  
23 the last three weeks of schedules, we'll product them; but  
24 at this point, everything else other than these last three  
25 weeks of the plaintiff's employment has been produced to

1  
2 plaintiff's counsel.

3 THE COURT: Okay, all right. Now let's turn to  
4 the privilege logs. Where are defendants on their  
5 privilege logs?

6 MR. ZOLDESSY: Your Honor, there are, you know, a  
7 handful of things that, you know, we had redacted that are  
8 mostly just forwards from our client or references to a  
9 lawyer's name, which have been redacted. And I'm really  
10 not aware of any other documents that have been designated  
11 or that we've, you know, withheld on the basis of  
12 privilege. But, I mean, as we put in our letter, we'll  
13 ensure by the end of this week plaintiff's counsel has a  
14 privilege log for whatever we've withheld thus far based on  
15 privilege.

16 THE COURT: Okay. All right. From plaintiff's  
17 perspective, are there other issues that need to be  
18 addressed today?

19 MS. ORZICK: Yes, your Honor. Referring you to  
20 issue two of our letter, we also requested complaints of  
21 discrimination and retaliation against the Manhattan  
22 locations of Equinox. Again for similar reasons why  
23 they're relevant with respect to the individual defendants,  
24 this is a retaliation suit. There is an abundance of case  
25 law in the Second Circuit that for retaliation cases it's

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probative to learn of other complaints of discrimination to see how the defendant responded to such allegations, whether they were properly investigated, whether any remedial action was taken. And that is subject to discovery and probative for plaintiff to show motive and intent. And so these documents have been requested by plaintiff. Defendants have yet to produce them.

THE COURT: For what period of time are you seeking these records for?

MS. ORZICK: I would have to take another look, but I think it was five years, your Honor.

THE COURT: Five years meaning going back to 2016?

MS. ORZICK: Right. So from 2016 through the present.

THE COURT: Okay.

MR. ZOLDESSY: Your Honor, if I may?

THE COURT: Sure, go ahead.

MR. ZOLDESSY: I mean, your Honor, this is a big company. I mean, I understand for some other cases, for some other companies you have to limit it to Manhattan may sound reasonable. During the time period at issue I think there's 37 different clubs that Equinox has operated in Manhattan. Some of these are quite sizable, and you have a lot of employees. And, you know, to have to search records

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for any internal complaint filed with 37 different clubs over any time period is burdensome. And none of this involves people relevant to this case. We have --

THE COURT: Well, wait a minute. Let me stop you right there. How does complaint -- what was the complaint policy? How did people make complaints?

MR. ZOLDESSY: I mean, there's a handbook with a reporting procedure which provides that you can complain to your supervisor or human resources if you have a complaint.

THE COURT: And is there a central human resources for all of the clubs in Manhattan?

MR. ZOLDESSY: There's different regions that it's divided up into. I mean, for instance -- and I think those have been changed over time -- the human resources director testified about there being an Upper East Side region, which I believe encompassed seven different clubs during the time the plaintiff worked there, which was kind of that region. But I don't believe -- it's changed over time. I'm not sure it was over -- I mean, there's only one human resources department, but as far as different territories, that's changed over the years, I know. And the plaintiff was there for nine months at one club. And, you know, we just have concerns that this is being overlitigated and it's a fishing expedition. We're right now today in the

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midst of the eighth deposition that plaintiff's counsel's conducted. We've produced everything and anything having to do with complaints at the 92nd Street club, which is where the plaintiff worked for all but her training period, when she was fired by the company. And to have to produce documents relating to 37 different clubs for any time period involving -- you know, there's probably who knows how many different general managers of turnover during the years of 37 different clubs and how many hundreds of employees, it's just burdensome, and it has nothing to do with the people involved in this case.

THE COURT: Well, wait a minute. You started arguing a little bit more when I had some questions about how these complaints are handled. So what I'm hearing is that the Upper East Side clubs all had the same HR person who would advise managers on discipline and termination of employees, is that correct?

MR. ZOLDESSY: That is correct.

THE COURT: And was that the case in 2017, '18 and '19?

MR. ZOLDESSY: I believe it might have changed. They might have rotated a bit during that time. But in general, my understanding is that the answer to that is yes.

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THE COURT: And the Upper East Side region is approximately seven clubs, you said?

MR. ZOLDESSY: Correct.

THE COURT: Okay. So what I am going to require is that Equinox take a look at similar types of complaints as plaintiff; and to the extent they were made by employees of the Upper East Side region in the period 2017 through '19. And the reason that I'm narrowing it to this is because it's to the extent plaintiffs are saying that it's relevant to see how the company responds, if there's one human resources officer who is advising at the 92nd Street location and six other locations, then there could arguably be relevance to how that person was advising manager on discipline, termination and response to discrimination complaints. So I'm going to require you to produce complaints again of a similar type of discrimination and retaliation for those -- that Upper East Side region for the period 2017 through 2019.

Anything else from plaintiff?

MS. ORZICK: No, your Honor. Thank you.

THE COURT: Anything from defendant Gecht? Mr. Shiloh, anything else you want to raise?

MR. SHILOH: No, Judge. Thank you for your ruling.

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2 THE COURT: Anything else from the Equinox  
3 defendants?

4 MR. ZOLDESSY: No, your Honor. Thank you.

5 THE COURT: Okay. So I would like to get a status  
6 update. Right now the schedule set by Judge Koeltl is fact  
7 discovery ending August 30. Are you all going to be able  
8 to make that, or do you need a slight extension?

9 MS. ORZICK: This is Hilary Orzick on behalf of  
10 the plaintiff. We are prepared to complete discovery by  
11 the 30th. To the extent that additional documents need to  
12 be produced in accordance to your Honor's ruling, perhaps  
13 your Honor can make an exception for the production of  
14 those documents. But other than that, we are prepared to  
15 end on Monday.

16 MR. ZOLDESSY: Your Honor, this is Jason Zoldessy  
17 for Equinox. I mean, we have no -- Equinox defendants have  
18 no intent for any new discovery. I would just ask that we  
19 have, you know, a couple of weeks or so just to produce  
20 whatever your Honor has ordered that we produce today. But  
21 other than that, you know, we believe that we're done with  
22 discovery.

23 THE COURT: Okay. And Mister --

24 MS. ORZICK: I'm sorry, your Honor, this is --  
25 sorry, this is Hilary Orzick again. I just realized --

1  
2 yeah, I'm just -- to the extent that we may need to  
3 redepose someone based on the production, we would just ask  
4 to, you know, have a window of time to either make an  
5 application or if -- or how your Honor would like to go  
6 about it. But I do want to leave the option open that to  
7 the extent this new production gives us a good-faith basis  
8 to redepose any of the witnesses for limited questioning  
9 based on that, you know, please -- it might be good to have  
10 a window or to have an open time before a summary judgment  
11 deadline.

12 THE COURT: Well, I don't know if I would permit  
13 reopening depositions. That, you know, we'd have to take a  
14 look at down the road. But what I'm going to allow, since  
15 you have expert discovery deadline of 10/30/2021, I don't  
16 think there's any harm in extending discovery through the  
17 end of September for purposes of defendants producing these  
18 additional documents that I've ordered. And if for some  
19 reason you can't get the plaintiff's remaining three hours  
20 of deposition in in the next couple of days, you could take  
21 that in the first two weeks of September.

22 What I'm also going to ask that you do is provide  
23 me with a status letter in 30 days. And if there's a need  
24 for the Court ruling on something, you can put that in the  
25 letter. Okay?

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PROCEEDINGS

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MR. ZOLDESSY: Thank you, Judge.

MS. ORZICK: Thank you, your Honor.

THE COURT: Thanks, everyone. Have a great day.

We're adjourned.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Europe v. Equinox Holdings, Inc. et al, Docket #20-cv-07787-JGK-KHP, was prepared using digital transcription software and is a true and accurate record of the proceedings.

*Carole Ludwig*  
Signature\_\_\_\_\_

Carole Ludwig

Date: August 26, 2021